



In the Matter of)
)
Requests for Appeal of Decisions of the)
Universal Service Administrator by)
) CC Docket No. 02-6
Universal Service Administrative Company)
Schools and Libraries Universal Service)
Support Mechanism)

Requestor: Puyallup School District 3
Billed Entity Number: 145268
FCC Registration Number: 0018731943
Funding Request Number: 1899019937
Form 471: 181004279

Appeal

In accordance with Sections 54.719 through 54.721 of the Commission's Rules, Puyallup School District 3 (Puyallup) appeals a denial of funding by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC). USAC issued a Funding Commitment Decision Letter for FCC Form 471 #181004279, denying funding for FRN 1899019937. In the FCDL, USAC stated the FCC Form 470 that established the competitive bidding process [# 180014620] did not include service of this type and therefore did not meet the 28-day competitive bidding requirement.¹ The facts that (1) the equipment in question serves as the demarcation point for broadband connectivity and the district's elementary schools could not receive 10 Gbps MAN connectivity without its presence and functionality, (2) Puyallup's

¹ 1_Puyallup_181004279 C1 Equipment FCDL Denial.pdf

contract with its current provider allows for the inclusion of a district-owned switch or router in conjunction with Unite Private Network (UPN)'s GBICs, (3) the FCC has a vision to equalize the treatment of fiber options in order to meet targeted bandwidths and be the most cost-effective means for the E-rate fund with its Second E-rate Modernization Order and FY 2018 Eligible Services List, and (4) USAC's current guidelines were followed by posting FCC Form 470 # 180014620 all support the eligibility of the requested module as Category 1 Network Equipment. Puyallup respectfully requests a reversal of USAC's original funding decision to deny FRN 1899019937 and issuance of a Revised Funding Commitment Decision letter with a favorable decision to fund the eligible request.

In accordance to E-rate rules, the district first submitted Appeal #114997 to USAC appealing the denial of funding which USAC subsequently denied. USAC issued a denial letter on October 1, 2018.² This appeal is timely filed within the allowable 60 days from the date of the decision we wish to appeal.

Introduction

USAC issued a Funding Commitment Decision Letter dated June 15, 2018, denying funding for FRN 1899019937. USAC's decision stated, "The FCC Form 470 that established the competitive bidding process [# 180014620] for this FRN [#1899019937] did not include service of this type; therefore, it does not meet the 28-day competitive bidding requirement." One could logically assume - although USAC's FCDL does not state this - that the Administrator assumed the switch and expansion module would be performing a Category 2 function. Puyallup, and its leased lit fiber provider UPN, both contend that the equipment in question on FRN 1899019937,

² 2_Puyallup_181004279 Denial of Funding_Appeal_180712.pdf

an expansion module for the district's core switch, will be solely performing an eligible Category One function. Eligibility of Category 1 equipment is based upon (1) the function of the switch on which the expansion module will be installed, (2) the FY 2018 Eligible Services List, (3) the Administrator's guidance in the Fiber FAQ's, and (4) the FCC's Second E-rate Modernization Order.

Background

Puyallup is currently in a multi-year contract for leased lit fiber circuits for MAN/WAN connectivity with UPN. The current contract for leased lit fiber allows for district-owned equipment (switch or router) to manage MAN/WAN traffic while the provider maintains ownership of the GBICs in order to comply with then E-rate rules regarding leased lit fiber.

In Funding Year 2009, Puyallup posted FCC Form 470 # 200460000719663 and RFP requesting bids for leased lit MAN service at 1 Gbps scalable up to 10 Gbps bandwidth. The RFP in Section 2.3 required that the bidder's solution must allow the district to retain routing control of traffic between "channels."³ UPN submitted the following response to RFP Section 2.3; "UPN is willing to work with the District to accomplish this task and simultaneously reduce overall project cost. UPN will allow the district to have full and unfettered access to those UPN switches and routers dedicated to District MAN function OR *UPN will allow the District to use it's [sic] own switches* and routers as the District chooses... *To comply with Erate rules on eligible services UPN will still be required to provide GBIC modules.* By doing this, at least three items are accomplished that further enhance the MAN from the District's perspective:

³ 3 _Excerpt from UPN's formal bid response.pdf

- 1) Reduced Price
- 2) Less Equipment Means Less Failure Points and Fewer Hops for Latency
- 3) Maximum Control Available for District That Still Complies with E-rate Rules”

UPN was awarded the bid and the district signed a contract in February 2009 which, in accordance with E-rate rules, clearly allowed for the district to use its own switch and/or router in lieu of a UPN-provided switch/router while UPN would provide, in every instance, the GBIC modules, thus retaining the classification of leased lit fiber. The district is currently within the term of that contract.

It is agreed that this configuration is atypical of other leased lit solutions; However, it is in the E-rate program’s best interest by providing cost savings on the monthly recurring service due to UPN would no longer need to upgrade its switching gear in order to provide increased 10 Gbps service and in the district’s best interest to manage its MAN traffic and reduce failure points. UPN, in order for the district to increase to 10 Gbps, would need to replace each of its existing switches at the elementary schools, resulting in a minimum 21% increase to the monthly recurring cost of the service, per UPN.⁴ In their letter of support of the eligibility of this funding request, UPN confirms that the district-owned switch for which the expansion model [in FRN 1899019937] will be installed is (1) allowable within its current contract with Puyallup, (2) necessary to provide 10 Gbps broadband connectivity to the school district, (3) will result in a 21% cost savings going forward since UPN will now not need to replace each of its switches,

⁴ 3_ Excerpt from UPN’s formal bid response, FY 2009

and (4) the district's service remains an eligible leased lit fiber MAN solution according to the current contract, and E-rate rules.⁵

Discussion

The FY 2018 ESL states, **regarding leased lit fiber**, leased dark fiber and self-provisioned broadband networks, "Eligible costs include monthly charges, special construction, installation and activation charges, modulating electronics and **other equipment necessary to make a Category One broadband service functional ("Network Equipment")**, and maintenance and operation charges. Network Equipment, and maintenance, and operation costs for existing networks are eligible. All equipment and services, including maintenance and operation, must be competitively bid."⁶

USAC's Fiber FAQ's clearly state that "Network Equipment is limited to modulating electronics *and other equipment necessary* to make a Category One broadband service functional. Network Equipment is eligible for Category One support."⁷ The district certifies, in a letter signed by both the Superintendent and the Executive Director of Capital Technology that the function of the core switch is to serve as a demarcation point between the last mile circuit and the school LAN.⁸ In the current configuration the core switch does interface with the district LAN, it does NOT however, route any LAN traffic. USAC further states in its Fiber FAQ's "In that case, the terminating router *or switch* would be Network Equipment eligible for Category One support, because without it, the needed broadband connectivity could not be delivered to the

⁵ 4 _UPN Letter of Support of Puyallup Appeal 2018-7-5.pdf

⁶ 5 _DA-17-973A1 _FY 2018 ESL.pdf

⁷ 6 _Fiber FAQ.pdf

⁸ 7 _Puyallup District Letter.pdf

school (i.e., the Category One broadband service would not function).”⁹ In this chosen configuration, the district’s core switch is necessary to provide broadband connectivity to the school district and thus the district’s existing core switch and the expansion module (requested in FRN 1899019937) is eligible as Category 1 equipment.

USAC continues in its Fiber FAQ’s “The mere fact that the device also interfaces with the school’s LAN and ultimately enables the LAN’s connectivity does not preclude the school from requesting Category One support for the cost of the device. For example, fiber to a school may terminate into a router that is then connected to the school’s LAN via a series of switches. The terminating router or switch must interface with the LAN for the LAN to receive connectivity. The router (or switch) into which the Category One fiber service terminates would be Network Equipment. It is necessary so that Category One broadband service to the school can function. Note that the demarcation points for different schools and libraries may vary based on the configurations of their networks.”

Administrator guidance regarding procurement for FY 2018-19 for an applicant seeking bids for eligible Category 1 equipment was to select Category One on the FCC Form 470, select “Other” from the drop-down selection of services, and to use the narrative to clearly describe the equipment being requested. Puyallup posted and certified FCC Form 470 #180014620 on January 11, 2018 according to Administrator guidance, selected “Other” from the Category One drop-down selections and used the narrative to describe the network equipment being requested.

The district reiterates the core switch and the expansion module are necessary components for the Category One broadband service to function and it does not route any LAN

⁹ 6_Fiber FAQ.pdf

traffic. The function of the core switch and expansion module indisputably performs an eligible Category One function. The district refutes USAC's Funding Commitment Decision Comments that Form 470 #180014620, which established the competitive bidding process for this FRN did not include the correct type of service, Category One Network Electronics. Form 470 #180014620 did accurately and clearly request bids for eligible Category One Network Electronics and was filed in accordance with USAC's guidance for Category One Network Electronics.

The FCC, in its Second E-rate Modernization Order, equalized the treatment of dark and lit fiber, stating "Equalizing the treatment of lit and dark fiber is also consistent with the Commission's approach in the Healthcare Connect Order," and "Following this recent precedent and given the broad support in the record, we will equalize the treatment of dark- and lit-fiber services within E-rate, beginning in funding year 2016."¹⁰ The Commission also stated "we adopt changes to the E-rate program's rules to equalize the treatment of lit and dark fiber, to allow applicants to self-construct and operate connections to their school and library buildings." Self-provisioned fiber networks were also made eligible by the FCC in this Order. True equalization across all platforms of delivery, leased lit, leased dark and self-provisioned, rightfully extends to the applicant's right to purchase and install eligible Category 1 equipment from the most cost-effective provider. We applaud the Commission's decision to equalize the treatment of fiber solutions as this provides E-rate applicants the widest breadth of options for securing high bandwidth speeds necessary meet the FCC's bandwidth target goals, in the most cost-effective manner. Puyallup School District 3 and Unite Private Networks have realized a

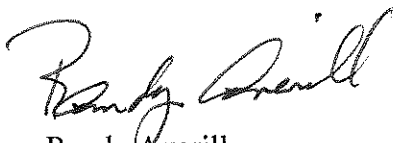
¹⁰ FCC 14-189A1, <https://docs.fcc.gov/public/attachments/FCC-14-189A1.pdf>

solution that will allow the district to meet the FCC's targeted bandwidth goal and do so in a manner that will reduce the cost to the E-rate program fund, all within the rules of the program and the intent of the FCC.

Conclusion

The facts that (1) the equipment in question serves as the demarcation point for broadband connectivity and the district's elementary schools could not receive 10 Gbps MAN connectivity without its presence and functionality, (2) Puyallup's contract with its current provider allows for the inclusion of a district-owned switch or router in conjunction with UPN's GBICs, (3) the FCC has a vision to equalize the treatment of fiber options in order to meet targeted bandwidths and be the most cost-effective means for the E-rate fund with its Second E-rate Modernization Order and FY 2018 Eligible Services List, and (4) USAC's current guidelines were followed by posting FCC Form 470 # 180014620 all support the eligibility of the requested module as Category 1 Network Equipment. Puyallup respectfully requests a reversal of USAC's original funding decision to deny FRN 1899019937 and issuance of a Revised Funding Commitment Decision letter with a favorable decision to fund the eligible request.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Randy Averill". The signature is fluid and cursive, with the first name "Randy" being more prominent than the last name "Averill".

Randy Averill
Executive Director, Capital Technology
Puyallup School District
November 15, 2018